

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

18-CR-6094 (FPG)

vs.

XAVIER TORRES,
Defendant.

Rochester, New York
September 15, 2021
3:09 p.m.

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PRETRIAL CONFERENCE

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANK P. GERACI
UNITED STATES DISTRICT JUDGE

JAMES P. KENNEDY, ESQ.
United States Attorney
BY: ROBERT A. MARANGOLA, AUSA
BY: CASSIE M. KOCHER, AUSA
100 State Street
Suite 500
Rochester, New York 14614

FOR DEFENDANT: MAURICE J. VERRILLO, ESQ.
3300 Monroe Avenue
Suite 301
Rochester, New York 14618

COURT REPORTER: Diane S. Martens
dimartens55@gmail.com

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P R O C E E D I N G S

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(WHEREUPON, the defendant is present.)

THE CLERK: This is 18-CR-6094, U.S. vs. Xavier Torres.
Rob Marangola and Cassie Kocher are here for the
government.

Maurice Verrillo is here for defendant.

Mr. Torres appears today for a pretrial conference.

THE COURT: Are you Xavier Torres?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Torres appears with his attorney.

Mr. Marangola is here on behalf of the government, along
with Ms. Kocher.

Is this our first pretrial? We had one before, didn't
we?

MR. MARANGOLA: I think we had one when they were
together, when Mr. Figueroa was still together with Mr.
Torres but this is the first one after the severance.

THE COURT: In this matter, the Court does have voir
dire suggestions by both the government and the defense; a
witness list from the government listing some 53 witnesses;
and the defendant listing 1 witness; proposed jury
instructions from both the government and the defendant.

I do not believe we received the exhibit list; is that

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3:10PM 1 right?

2 **MR. MARANGOLA:** Judge, we have not submitted a final
3 exhibit list yet. I've been speaking to Mr. Verrillo
4 regarding stipulations and we're finalizing those. I believe
5 we will have some agreement on a number of matters --

6 **THE COURT:** Okay.

7 **MR. MARANGOLA:** -- in terms of foundation.

8 So, we're working to finalize that and then I'll be able
9 to have Mr. Torres and the government sign a stipulation and
3:11PM 10 then get a final exhibit list.

11 **THE COURT:** Okay, Mr. Verrillo, is that the case?

12 **MR. VERRILLO:** Yes, we're working towards that, Judge,
13 yes.

14 **THE COURT:** All the motions that were previously filed,
3:11PM 15 I believe have all been decided and resolved. I don't think
16 there's any outstanding motions, is that right?

17 **MR. MARANGOLA:** That's my understanding, Judge.

18 **THE COURT:** And the defense?

19 **MR. VERRILLO:** Since the case has been severed, there's
3:11PM 20 a few other issues that have come up that I want to submit a
21 memo on.

22 Since this severance has occurred, there's a few
23 issues -- I know I filed a prior motion, 404(b) and some
24 other things dealing with the nickname, things of that
3:12PM 25 nature, which the Court had dealt with.

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3:12PM 1 But I do think that there's an issue here with regard to
2 the scope of the evidence that the governments wants to
3 present.

4 My client had left the area basically late 2015, and had
3:12PM 5 an incident here in February of 2016 but he basically was not
6 here. So they want to bring evidence in through '18 and I
7 had a motion that I wanted to submit on that issue, the Rule
8 403 issue.

9 **THE COURT:** When are you going to do that?

3:12PM 10 **MR. VERRILLO:** Soon. I'm sorry, I just wanted the Court
11 to be aware of that.

12 **THE COURT:** Okay.

13 **MR. VERRILLO:** That is a new issue subsequent to the
14 severance.

3:12PM 15 **THE COURT:** Give Mr. Marangola an opportunity to respond
16 to that.

17 So there are no other issues right now?

18 There is one issue regarding jury selection. We're
19 scheduled to begin jury selection on October 12th. I was
3:12PM 20 just notified Judge Wolford had previously scheduled, prior
21 to my scheduling this trial, a jury trial starting the same
22 date.

23 Because of the whole COVID situation, it's very
24 difficult to pick two juries on the same day.

3:13PM 25 I believe Judge Siragusa actually has a jury selection

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3:13PM 1 October 18th, as well.

2 So I'm wondering is it possible to move up our jury
3 selection to October 7th? Are you both available for that?
4 And that would avoid that conflict.

3:13PM 5 We could block off the 7th and 8th for jury selection.
6 Obviously we would not be in session the 9th, 10th or the
7 11th, which is a holiday, and then actually begin openings or
8 proof on the 12th.

9 Would you be able available for that, the government?

3:13PM 10 **MR. MARANGOLA:** Yes, Judge.

11 **THE COURT:** Mr. Verrillo?

12 **MR. VERRILLO:** So there would be no proof on this those
13 days?

14 **THE COURT:** No. I wouldn't expect you to present any

3:13PM 15 proof because we'd be moving it up. Jury selection only.
16 And if we finish early on the 7th, I wouldn't push you to
17 begin any proof until at least the 12th.

18 **MR. VERRILLO:** Yes, I can work that out, yes.

19 **THE COURT:** Then we'll do that. We'll make a change to
3:14PM 20 begin jury selection October 7th at 8:30.

21 Now, this case, you believe it's going to be
22 approximately four weeks, Mr. Marangola?

23 **MR. MARANGOLA:** Judge, I think we'll be able to do it in
24 probably between three and four. I don't think we'll need
3:14PM 25 the full four weeks.

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3:14PM 1 **THE COURT:** But we'll block out four weeks to be safe.

2 **MR. MARANGOLA:** Yes, I think that's safe, especially
3 with stipulations.

4 **THE COURT:** And alternates. You think 16, again, as in
3:14PM 5 the past trial, 4 alternates, in other words?

6 **MR. MARANGOLA:** Probably, yes.

7 **MR. VERRILLO:** Okay, yes, Judge.

8 **THE COURT:** I think that's probably the safest approach
9 to take with the current COVID situation we still have,
3:14PM 10 unfortunately.

11 So we'll do that. We'll plan on selecting 12 jurors, 4
12 alternate jurors on October 7th.

13 And if we finish that, if we complete on the 7th, we
14 will not be in session on the 8th. If we need the 8th to do
3:15PM 15 that, we'll do that, as well, and hold off any openings or
16 proof until the 12th.

17 Okay. Great. Thank you. I appreciate your cooperation
18 on that. Okay. We're all set, thanks.

19 **MR. MARANGOLA:** Thank you, Judge.

3:15PM 20 **MR. VERRILLO:** Judge, can I just --

21 **THE COURT:** Oh, sure.

22 **MR. VERRILLO:** I have one item I wanted to make. You're
23 all set. I just want to ask you, and let you know, I'm a
24 candidate for Supreme Court and I'm going to be doing things
3:15PM 25 and I'll be out in the media and so forth. I wanted the

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3:15PM 1 Court to be aware. I don't know how that affects jury
2 questioning or whatever but during the time of this trial I
3 will be out in various media. So, I just wanted you to be...
4 **THE COURT:** I ran for Supreme Court, too. You're not
3:15PM 5 going to get much media quite, frankly.
6 **MR. VERRILLO:** I'm just telling you in case that became
7 an issue.
8 **THE COURT:** I understand what you're saying. I don't
9 see it as an issue.
3:15PM 10 **MR. VERRILLO:** One other thing. I would -- I did
11 receive the Jencks material Monday, late Monday or on Monday
12 and I did want to be with my client. I know there's an order
13 restricting certain things, but I did want to see if there
14 could be times I could meet over here because the Monroe
3:16PM 15 County jail is quite restrictive and I wanted to see if that
16 could be accommodated where he could be brought over for
17 sessions, morning or whatever.
18 **THE COURT:** You mean prior to the trial?
19 **MR. VERRILLO:** Yeah, just to have some sessions.
3:16PM 20 **THE COURT:** Try to make arrangements with the Marshals
21 because we're pretty busy here, so there may be times and
22 space available to allow you to do that and we'll try to
23 accommodate.
24 **MR. MARANGOLA:** I guess Mr. Verrillo indicated he wanted
3:16PM 25 to file a motion since we are sort of getting close,

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3:16PM 1 especially advancing jury selection, did the Court want to
2 issue --

3 **THE COURT:** A scheduling order, yes. Let's do that.
4 Yes, how about can you file by next Tuesday?

3:17PM 5 **MR. VERRILLO:** Could I have Wednesday.

6 **THE COURT:** Wednesday the 22nd. How long do you need to
7 respond, Mr. Marangola?

8 **MR. MARANGOLA:** If we could have till Monday, the 27th.

9 **THE COURT:** Okay. So the motion to be filed the 22nd.

3:17PM 10 Response by 27th. And we'll put it on for October 1st, we'll
11 come back to try to resolve those issues, October 1st at
12 3 p.m.

13 **MR. MARANGOLA:** That works, Judge.

14 **MR. VERRILLO:** Yes, Judge.

3:17PM 15 **THE COURT:** Okay, great. Thank you.
16 (WHEREUPON, proceedings adjourned.)

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CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court
of the Western District of New York before the
Honorable Frank P. Geraci on September 15, 2021.

S/ Diane S. Martens

Diane S. Martens, FCRR, RPR
Official Court Reporter